

THE HONORABLE RICARDO S. MARTINEZ

THE HONORABLE THERESA L. FRICKE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES, INC.,

Defendant.

Case No. 2:21-cv-00799-RSM-TLF

**PLAINTIFF'S UNOPPOSED MOTION
TO SEAL PORTIONS OF AND
CERTAIN EXHIBITS TO MOTIONS IN
LIMINE**

NOTE ON MOTION CALENDAR:
September 13, 2024

I. INTRODUCTION

Pursuant to Civil L.R. 5(g), Plaintiff Utherverse Gaming LLC (“Plaintiff”) respectfully moves the Court to seal portions of and certain exhibits accompanying Utherverse Gaming’s Motions in Limine (“MILs”) filed concurrently herewith. The portions of the MILs and certain accompanying exhibits sought to be sealed include Utherverse Gaming’s and third-parties Utherverse Digital Inc’s (“UDI”), Fortress Investment Group’s (“Fortress”), and MASSIVE-3’s confidential business and/or technical information and discussions regarding the same. Good cause exists to support the sealing of such confidential material, because the sensitive and confidential information should remain out of public record.

In support of its MILs, Utherverse Gaming is filing 1 exhibit that contain Utherverse Gaming’s material designated as either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order entered in this case (Dkt. 67). Utherverse Gaming is filing 2 exhibits that contain UDI’s material designated as either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order entered in this case. Utherverse Gaming is also filing 1 exhibit that contain Fortress’ material designated as either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order. Utherverse Gaming is also filing 1 exhibit that contain MASSIVE-3’s material designated as either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order. Utherverse Gaming wishes to remain in compliance with the Protective Order and the Local Rules. The table below summarizes the information sought to be sealed in this motion:

Documents	Portions to be Sealed	Reasons for Sealing
Plaintiff's MILs	Words and/or information on page 5, lines 8-14.	Contains Utherverse Gaming's and Fortress' confidential business information and discussions regarding the same.
Exhibit A – excerpts from the Deposition Transcript of Brian Shuster (March 3, 2023)	To be sealed in its entirety	Contains UDI's confidential business information and discussions regarding the same.
Exhibit B – excerpts from the Deposition Transcript of Aaron Burch (April 11, 2023)	To be sealed in its entirety	Contains UDI's confidential business information and discussions regarding the same.
Exhibit C – excerpts from the Deposition Transcript of Ami Shah (June 6, 2023 at 9:04 a.m.)	To be sealed in its entirety	Contains Fortress' confidential business information and discussions regarding the same.
Exhibit D – excerpts from the Deposition Transcript of Ami Shah (June 6, 2023 at 1:40 p.m.)	To be sealed in its entirety	Contains Utherverse Gaming's confidential business information and discussions regarding the same.
Exhibit E – excerpts from the Invalidity Report of Benjamin Ellinger (April 14, 2023)	To be sealed in its entirety	Contains MASSIVE-3'S confidential technical information and discussions regarding the same.

II. ARGUMENT

To support a motion to seal a document in this District, a party must include a “specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of: (i) the legitimate private or public interests that warrant the relief sought; (ii) the injury that will result if the relief sought is not granted; and (iii) why a less restrictive alternative to the relief sought is not sufficient.” L.R. 5(g)(3)(B).

In general presumption in favor of public access to court documents “does not mandate disclosure in all cases” *San Juan Mercury News, Inc., v. U.S. Dist. Court – Northern Dist.* (San Jose),

1 187 F.3d 1096, 1102 (9th Cir. 1999). To overcome the general presumption of public access, a party
 2 must demonstrate that there is either “good cause” or “compelling reasons” to seal the documents at
 3 issue. *See Ctr. For Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2015).
 4 The Ninth Circuit has reiterated this principle, concluding that “compelling reasons” must be
 5 articulated to maintain the secrecy of the material attached to dispositive motions rather than the “good
 6 cause” showing requiring to seal documents filed in a non-dispositive motion. *Kamakana v. City and*
 7 *County of Honolulu*, 447 F.3d 1172, 1178-78 (9th Cir. 2006) (internal quotes omitted).

8 The “good cause” standard is taken from Fed. R. Civ. P. 26(c)(1), which governs the issuance
 9 of protective orders in the discovery process: “The Court may, for good cause, issue an order to protect
 10 any party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed.
 11 R. Civ. P. 26(c)(1); *see also Ctr. For Auto Safety*, 809 F.3d at 1097.

12 The presumption of public access does not outweigh the interests of Utherville Gaming, UDI,
 13 Fortress, or MASSIVE-3 in keeping the identified material sealed. Utherville Gaming and third-
 14 parties UDI, Fortress, and MASSIVE-3 have designated its respective materials as confidential or
 15 highly confidential. While Utherville Gaming takes no position regarding the designation of the
 16 foregoing third-parties, Utherville Gaming wishes to comply with the agreement formalized in the
 17 Stipulated Protective Order. Accordingly, under the standards set forth in *Kamakana*, this Court
 18 should preserve the secrecy and confidentiality of the sealed portions of the MILs and exhibits
 19 associated with the same.

20 **III. CERTIFICATION**

21 Pursuant to Local Civil Rule 5(g)(3)(A), counsel for Utherville Gaming met and conferred
 22 with counsel for Epic on August 30, 2024 to attempt to minimize the amount of material filed under
 23 seal. Epic does not oppose Utherville Gaming’s filing the materials identified above under seal.
 24 Counsel for both parties further confirmed the same understanding on November 9, 2023.

25 Pursuant to Local Civil Rule 5(g)(3)(A), counsel for Utherville Gaming met and conferred
 26 with counsel for UDI on August 30, 2024 to attempt to minimize the amount of material filed under
 seal. UDI does not withdraw the confidential designation for the materials identified above nor does

1 Utherville Gaming oppose that designation. UDI further indicated that it does not oppose this Motion
2 to Seal.

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4 Pursuant to Local Civil Rule 5(g)(3)(A), counsel for Utherville Gaming met and conferred
5 with counsel for Fortress on August 29, 2024 to attempt to minimize the amount of material filed
6 under seal. Fortress does not withdraw the confidential designation for the materials identified above
7 nor does Utherville Gaming oppose that designation. Fortress further indicated that it does not oppose
8 this Motion to Seal.

9 **IV. CONCLUSION**

10 For the reasons set forth above, Utherville Gaming respectfully requests that the Court
11 grant its motion to seal portions of and certain exhibits accompanying its MILs.

1 DATED this 30th day of August, 2024

Respectfully submitted,

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20 The signatory certifies that this memorandum contains 976 words, in compliance with the Local
21 Civil Rules. Counsel relied on the word count of a word-processing system used to prepare the
22 brief